

Warren Havens  
& Polaris PNT PBC

October <sup>26</sup>~~28~~, 2016

To: Marlene Dortch, Secretary, FCC

Attn: Chief, Wireless Telecommunications Bureau, and General Counsel, OGC

Filed: On ECFS in dockets 11-71, 13-85, 11-79, 10-83

Re: Further information regarding the bankruptcy case *In re Leong Partnership*,<sup>1</sup> and the interests of Havens and Polaris (the “Petitioning Creditors” or “Filers”).<sup>2</sup>

This filing follows a series of past filings by the undersigned on the above referenced matter, should be read in context of the past filings, and refers to matters already presented.<sup>3</sup>

1. Regarding the October 6, 2016 bankruptcy court’s “Order Setting Status Conference,” attached hereto is a status report with notices submitted on October 24, 2016 by counsel to Havens and Polaris. For good cause reflected in the status report, it was not submitted on October 14, 2016 as earlier planned.

2. As shown, the FCC and various parties active before the FCC including in the dockets listed above, were served copies of the status report.

This includes PTC220 LLC, SCRRA, Alstom, MCLM, Choctaw, and Puget Sound Energy as interested parties in the subject bankruptcy and the FCC licenses involved in the estate of the bankruptcy.

The status report, in large part, informs the bankruptcy court of violations of the automatic stay under 11 USC §362, and further informs the parties served a copy of the status report, including the FCC.

3. The status report presents on a timely basis certain objections to FCC-license-based actions and inaction by the Receiver of the legal entities and FCC licenses subject of the estate of the putative Debtor, Leong Partnership. The FCC, as a listed party in interest in this bankruptcy case, will be provided a hard copy by service upon the FCC Secretary. See PACER for an electronic copy. Filers believe the report’s presentations are timely for purposes of the bankruptcy court authority over the estate including the noted actions and inaction in FCC matters. As this report explains, the Petitioning Creditors will seek affirmative relief and instruction from the bankruptcy court on these and other FCC related matters, and will provide to

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<sup>1</sup> *In re Leong Partnership*, Case No. 16-42363 CN, Chapter 11, US Bankruptcy Court, N.D. California.

<sup>2</sup> Polaris PNT, PBC is a Delaware Public Benefit Corporation.

<sup>3</sup> See the Filers’ information update submitted in these dockets on 10-3-16. The statements in that update regarding the nature and conditions of the filing, and the standing and interest of the Filers, apply to the instant filing as well and are referenced and incorporated herein in full. In addition, the Filers have rights to submit this and their preceding informational filings regarding bankruptcy matters under *Donovan v. Dallas*, 377 U.S. 408 (1964), and the cases in footnote 4 below and the additional authorities cited therein. Further, no person or party has objected to these informational filing.

the FCC the relevant pleadings and any court orders and issuances in accord with FCC protocol and interests.<sup>4</sup>

4. The actions and position of the petitioning creditors (the undersigned) to date, and that will be pursued, in this bankruptcy case of the subject FCC licenses (“Bankruptcy Licenses”) (currently still subject to a state court receivership to some extent) comply with FCC law, specifically: (i) including proper and not premature transfer of control, by prior FCC approval, and (ii) where all parties in interest to the transfer of control have rights to submit their positions as the FCC has recognized under US Supreme Court holdings.

This applies to FCC staff actions as well.

The following full Commission cases are instructive (emphasis added, but all of the text below is relevant):

In *FCC 11-46, In the Matter of... US Wireless Cable, and Rioplex Wireless Ltd.* (2011):

[FN] 102. It is clear that the bankruptcy court did not have the authority to assign the licenses to USWS without the Commission’s prior consent pursuant to Section 310(d) of the Communications Act. The Supreme Court has long recognized that determinations to grant or deny a radio license are exclusively within the regulatory province of the Commission, not the courts. See *FCC v. WOKO, Inc.*, 329 U.S. 223, 229 (1946) (“it is the Commission, not the courts, which must be satisfied that the public interest will be served [in issuing a] license”). See also *Radio Station WOW, Inc v. Johnson*, 326 U.S. 120, 131 (1945) (finding that a state court order seeking to control the regulatory filings by parties to license applications exceeded the court’s authority because it would impose “restrictions upon the licensing system which Congress established”). Thus, had the bankruptcy court purported to issue an order recognizing a transfer of legal title from USWC to USWS, it would have exceeded its judicial power.

In *FCC 95-67, In re Applications of DALE J. PARSONS, JR.*, 10 FCC Red No. 6 (1995):

11. While this case is indeed unusual in that the putative licensee, Parsons, is not the debtor-in-bankruptcy, clearly, the ruling of the Bankruptcy Court must be taken into account. The Commission is obliged to reconcile its policies under the Communications Act with the policies of other federal laws and statutes, including the federal bankruptcy laws in particular. *O.D.T. International*, 9 FCC Red at 2576 (citing *LaRose v. FCC*, 494 F.2d 1145 (D.C. Cir. 1974)); *Arecibo*, 101 FCC 2d at 550 & n.12; *Overmyer*, 94 FCC 2d at 126. Thus, where a bankruptcy court specifically finds that a prior sale of a station and its assets amounts to an improper post-petition transfer, we believe that the public interest is generally best served by deferring to the findings of the court and approving the involuntary assignment of license to the trustee or receiver [receiver in a bankruptcy] so that innocent creditors may receive the full protection afforded by federal bankruptcy law.

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<sup>4</sup> See, e.g., *In re Parsons*, FCC 95-67 (1995); *Parsons v. Plotkin*, 1997 U.S. App. LEXIS 3200 (9th Cir., 1997); *Parsons v. Plotkin*, 187 B.R. 302 (9th Cir. BAP, 1995).

[ . . . ]

14. Receiver's Premature Assumption of Control. While courts may determine the ownership of physical assets, such as station facilities, the Commission retains exclusive authority to determine who shall be licensed to operate broadcast stations. 47 U.S.C. §§ 301, 303, 307, and 308. See also *Radio Station WOW v. Johnson*, 326 U.S. 120, 131-132 (1945). Thus, we have emphasized that, pursuant to 47 U.S.C. § 310(d), a receiver or trustee is generally required to await Commission grant of its application before assuming control. *Overmyer*, 94 FCC 2d at 127 n.11. In this case, in conflict with Section 310(d) of the Communications Act, the Bankruptcy Court ordered the Receiver to operate the station prior to receiving Commission approval.

[ . . . ]

20. We find that there is no persuasive reason to treat the situation here, involving an adjudicated, avoided post-petition transfer in bankruptcy, any differently. Moreover, we note that Parsons is exercising his right to participate in the bankruptcy proceeding. He has not shown any extraordinary circumstances or otherwise raised any substantial and material question of fact warranting a hearing before the Commission.

/s/

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